

Residential Properties (First-hand Sales) Bill
Response to Questions from the Legal Service Division dated 12 April 2012

Questions	Administration's Response
<p><u>Clause 2(1)</u></p> <p>“building”, “development”, “phase”</p> <p>1. Clause 2(1) provides for, inter alia, signposts for the interpretation of “building”, “development” and “phase” in that the reader should “see section (clause 3)” of the Bill. The heading of clause 3 provides for the interpretation of “development, phase and building”. Please identify the sub-clause(s) which is relevant for the applicable interpretation of “building”, “development” and “phase” respectively.</p>	<p>Clauses 3(1), 3(2) and 3(4) are relevant to the interpretation of “development”; clause 3(4) is relevant to the interpretation of “building”; and clause 3(3) is relevant to the interpretation of “phase”.</p>
<p>“house”</p> <p>2. Under clause 2(1), “house” means “a building that contains only one residential property”. Clause 6(1) provides that “residential property”, “in relation to a development or a phase of a development, means any real property in the development or the phase constituting a separate unit used, or intended to be used, solely or principally for human habitation without contravening the land grant and the occupation permit (if any)”. Please clarify</p>	<p>Under the Bill, a residential property constitutes a separate unit by definition. A house means a building that contains only one residential property (i.e. one separate unit). A multi-unit building means a building that contains more than one residential property (i.e. more than one separate unit). A development may contain (i) only multi-unit buildings, (ii) only houses, or (iii) both multi-unit buildings and houses.</p>

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<p>whether “a house” under the Bill is same as “a separate unit” under clause 6(1).</p>	
<p>3. Please also explain the relationship of these 2 interpretation provisions in, for example, a development consists of a number of houses.</p>	
<p><u>Clause 2(2)</u></p> <p>4. Please explain why a note located in the text of the Ordinance (after the Bill is enacted), which is said to be “provided for information only and has no legislative effect”, has to be included in the Ordinance.</p> <p>5. Does LegCo have power to scrutinize or make Committee Stage Amendments to the note(s) located in the Bill?</p> <p>6. What is the difference between such a note located in the Bill and the Explanatory Memorandum of a Bill?</p>	<p>There is a note for clause 18(1) of the Bill, and clause 28(2) of Schedule 1 to the Bill. Each of these notes draws the reader's attention to other relevant provisions in the Bill and helps the reader to get a clearer picture of the Bill. A note is provided only for information and serves no other purpose.</p> <p>A note located in the Bill forms part of the Bill. The LegCo has power to scrutinize or make Committee Stage Amendments to such a note in the same way as it does for the section heading of a provision.</p> <p>A note located in the Bill will form part of the Ordinance after the Bill is enacted.</p>

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<p>7. Please clarify whether such “note(s)” is(are) provided administratively. What will be the procedure involved for the future amendment of such a note?</p> <p>8. Please advise that, apart from the text of the Ordinance, whether any other note(s) for information are or will be provided elsewhere; and if so, whether there is any difference in the status between the notes in the Ordinance and those provided elsewhere.</p>	<p>A note located in the Bill will form part of the Ordinance after the Bill is enacted. Any amendment to such a note will be made by legislative amendment.</p> <p>If the Bill is enacted, the Ordinance will be published in the loose-leaf edition of the Laws of Hong Kong. Under section 2(4) of the Laws (Loose-leaf Publication) Ordinance 1990, editorial notes may be included in the loose-leaf edition. Under section 2(6) of that Ordinance, such editorial notes are not part of the legislation published in the loose-leaf edition.</p>
<p><u>Clauses 10 and 11</u></p> <p>9. For the purposes of clause 10(1) (application of the Bill), clause 11(1)(a) provides that an agreement for sale and purchase in respect of a residential property is not to be regarded as having been entered into in respect of the residential property in the situation where the agreement for sale and purchase has been terminated or has been declared void by the court (clause 11(2)).</p> <p>10. Please clarify the date on which the Bill becomes applicable to the relevant residential property, for example –</p> <p style="padding-left: 20px;">(a) in the case of termination of agreement, whether it is the date on which the sale and purchase agreement is made, or the</p>	<p>Under clause 10(1), the Bill applies to any residential property in respect of which no agreement for sale and purchase has ever been entered into and no assignment has even been made. Under clause 11(1) and (2), an agreement for sale and purchase is not regarded as having been entered</p>

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<p>date of termination of such agreement; or</p> <p>(b) in the case of a declaration by the court, whether it is the date on which the sale and purchase agreement is made, the date of the court order, or the date on which the court order specifies such agreement is void.</p>	<p>into in respect of a residential property if the agreement has been terminated or has been declared void by the court. At the time when the question arises as to whether the Ordinance (if enacted) applies to a residential property, one has to ask whether any agreement for sale and purchase has ever been entered into the residential property and, if an agreement has been entered into, whether the agreement has been terminated or declared void by the court.</p>
<p><u>Transitional provisions</u></p> <p>11. Are there any transitional provisions in the Bill to cater for the situation where the sale of individual residential properties (i.e. individual units) of a development or a building takes place in different stages which straddles over the periods before and after commencement of operation of the Bill?</p>	<p>The Bill will apply to “specified residential properties”, which means any residential property to which the Ordinance applies by virtue of clause 10. Clause 10 stipulates that the Bill will apply to any residential property in respect of which no agreement for sale and purchase has ever been entered into and no assignment has ever been made, except the three situations as set out in clauses 10(3) (4) (5) and (6) of the Bill. For a residential development or a phase which has some of the residential properties sold prior to the coming into operation of the Ordinance, the Ordinance will apply to those remaining residential properties of the residential development or phase that fall under the definition of “specified residential property”.</p>